

May 1, 2023

The Honorable Xavier Becerra
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Becerra:

We write regarding an issue of critical importance to our Florida hospitals, which serve over 5 million Floridians on Medicaid, from Pensacola to Jacksonville and Tallahassee to Miami. These hospitals ensure the state's most vulnerable and medically underserved have access to essential health care services.

In February, the Centers for Medicare & Medicaid Services (CMS) released an Informational Bulletin entitled "Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments." The Bulletin calls into question specific longstanding methods for funding the nonfederal share of Medicaid-related payments that have been used across the country for over twenty years. In doing so, the Bulletin echoes themes from the Medicaid Fiscal Accountability Regulation (MFAR), which was ultimately withdrawn, and from a CMS litigation position that a federal judge, just last year, called "distanced" from the statutory text.

To be clear, we support accountability in the Medicaid program, and believe that we need to be stewards of taxpayer dollars to make sure that we are paying for only what's needed and in an appropriate and legal manner. However, the MFAR policies resurrected in the recent Bulletin miss the mark. When CMS proposed MFAR in 2019, Florida's Agency for Health Care Administration (AHCA) commented that the policies would have an "immediate and crippling" effect that would "negatively and irreparably" harm state Medicaid programs. AHCA asserted: "[I]t is abundantly clear that CMS has not sufficiently assessed the substantial consequences this proposed rule would have on both the providers serving and the beneficiaries relying on Medicaid program services[.]" Former Representative Donna Shalala co-sponsored a bipartisan bill that prohibited the Secretary of Health and Human Services (HHS) from taking action to finalize or implement MFAR. The bill highlighted the steps HHS missed in its hasty MFAR rollout, calling for the Comptroller General to: (1) identify the actual legal reporting requirements under the Social Security Act, and (2) evaluate financial impact for State and local budgets.

Given these prior concerns for MFAR and what we felt was a departure from current law and historical norms, we were troubled by the sudden announcement from CMS to publish this Bulletin in what potentially appears to be another attempt to stray from established practices for financing state Medicaid programs. Notably, CMS is proposing this significant change to Medicaid financing without going through the rulemaking process, availing the public with no

opportunities to comment on the potential impacts that such changes could have for our constituents and the hospitals that serve them.

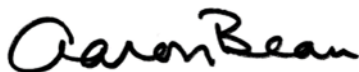
For Medicaid beneficiaries in Florida, the integrity of the Medicaid hospital safety net often represents the difference between life and death. Florida's Medicaid enrollees include the state's most vulnerable – the elderly, disabled, and indigent. Infants, children, and individuals from communities of color make up most of the state's enrollees, with beneficiaries living in our urban and rural communities. Through our collective representation of the state, we see the faces of Medicaid-dependent citizens in all districts.

Given these historical concerns for prior attempts to reinterpret Medicaid financing laws, we fear that the most recent Bulletin creates needless uncertainty for the hospitals that serve our communities by throwing confusion for state financing without clear instruction or followup for states. The Bulletin forces hospitals to envision a future without the dollars that sustain their mission. Even worse, the Bulletin provides no solutions or alternatives to the current financing methods, leaving hospitals without assurance that they will be able to continue meeting community needs.

We recognize the urgency of this problem and agree that Floridians deserve consistent, reliable, and fair action from your agency. The state welcomes any review of Medicaid funding practices, but we stress that such reviews must be conducted under established law and agency custom. Unfortunately, the recent CMS Bulletin misses the mark.

We ask CMS to withdraw the Bulletin and look forward to working with you to ensure the integrity of the Medicaid system remains intact. Thank you for your attention to this matter.

Sincerely,



Aaron Bean
Member of Congress



Jared Moskowitz
Member of Congress



Laurel Lee
Member of Congress



John H. Rutherford
Member of Congress



Michael Waltz
Member of Congress



Darren Soto
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Maria Elvira Salazar
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Brian Mast
Member of Congress

CC: The Honorable Chiquita Brooks-LaSure, Administrator Centers for Medicare & Medicaid Services

The Honorable Daniel Tsai, Deputy Administrator and Director Center for Medicaid and CHIP Services